APPEAL NO. 010923
FILED JUNE 8, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 9, 2001. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury _____, and has disability resulting therefrom beginning _____. The appellant (carrier) appeals and seeks reversal on sufficiency grounds, questioning the hearing officer's reliance on the personal comfort doctrine. There is no response in the file from the claimant.

DECISION

Affirmed.

The hearing officer did not err in resolving that the claimant sustained a compensable injury in the form of an injured patella (kneecap) _____. The claimant was injured when she fell in the parking lot of the employer's premises. At the time, she was on an authorized break, and had followed a coworker with whom she was speaking out of the break room and into the parking lot because he was leaving. The evidence adduced at the record, including the claimant's testimony and medical records, supports the hearing officer's determination that the claimant fell down in the course and scope of her employment and injured her kneecap, while on an authorized, paid break and while walking in the parking lot of her employer.

The fact that the claimant had preexisting knee problems was a matter for the hearing officer to weigh, but was not dispositive of the existence of an injury from her fall. An incident may indeed cause injury where there is preexisting infirmity where no injury might result in a sound employee, and a predisposing bodily infirmity will not preclude compensation. Sowell v. Travelers Insurance Company, 374 S.W.2d 412 (Tex. 1963). However, the compensable injury includes these enhanced effects, and, unless a first condition is one for which compensation is payable under the 1989 Act, a subsequent carrier's liability is not reduced by reason of the prior condition. St. Paul Fire & Marine Insurance Company v. Murphree, 357 S.W.2d 744 (Tex. 1962).

The second argument raised by the carrier is that since the claimant was injured during a break when she was in the parking lot of her employer and not furthering the business interests of her employer, she did not sustain a compensable injury, even under the personal comfort doctrine. We do not agree. The personal comfort doctrine grants that an employee remains in the course and scope of his employment when engaging in acts of a personal nature that he might logically perform for health and comfort as acts incidental to his employment. *See* Texas Workers' Compensation Commission Appeal No. 010564, decided April 19, 2001.

Injuries occurring during personal comfort activities like eating, drinking, using toilet facilities, smoking, relaxing, and engaging in recreational activities, are generally compensable as advancing the interests of the employer in having an employee attending his personal needs in order to be a more efficient worker. *See* Yeldell v. Holiday Hills Retirement and Nursing Center, Inc., 701 S.W.2d 243 (Tex. 1985); Texas Workers' Compensation Commission Appeal No. 990516, decided April 16, 1999; Texas Workers' Compensation Commission Appeal No. 970064, decided February 25, 1997; Texas Workers' Compensation Commission Appeal No. 941693, decided January 27, 1995. Further, In Texas Workers' Compensation Commission Appeal No. 94079, decided February 28, 1994, the Appeals Panel addressed a case very similar to the one at bar and delineated some factors that may be relevant in determining whether the claimant would fall into the personal comfort category, including, but not limited to: whether her break was authorized; whether she was injured on the owner's premises or in close proximity to the workplace; where she was in any kind of rule violation at the time of her injury; and, whether any question had been raised that the claimant was not at her work site. The hearing officer decided that the claimant met all of the criteria expounded in Appeal No. 94079. The hearing officer could consider that continuing a conversation with a coworker while on an authorized break was within the ambit of this doctrine just as the conversation engaged in by the claimant in the Yeldell case.

The hearing officer did not err in determining that the claimant had disability beginning _____. Evidence supporting the hearing officer's decision includes the testimony of the claimant and the records of her treating doctor. By definition, disability depends upon a compensable injury, which the hearing officer here found. *See* Section 401.011(16).

The parties presented evidence that genuinely conflicts on the disputed issues. Pursuant to Section 410.165(a), the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not disturb the challenged findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

For these reasons, we affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge